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Petitioner, Pro Se

**MONTANA 13TH JUDICIAL DISTRICT COURT
YELOWSTONE COUNTY**

Public Service Commissioner Brad Molnar)	Cause No. _____
on behalf of Residents of Public Service)	
Commission District 2 and all others)	COMPLAINT
served by NorthWestern Energy.)	

Plaintiff

Vs.

Montana Public Service Commission,)	
Pittsburg Power and Light,)	
)	
Defendants.)	

COMES NOW the Plaintiff, Brad Molnar, and respectfully states the following:

1. That on May 25, 1999, Docket number D99.4.82 (Docket) the Montana Public Service Commission (PSC) knew or should have know that it was violating the 1997 Electric Utility Industry Restructuring and Customer Choice Act (SB 390) Hereafter known as Ch.505 and Public Law 102-486 (Oct. 24,1992) amending 15 U.S.C. 79 when it confired the status of Exempted Wholesale Generator status on Montana Power Company (MPC) and Pittsburg Power and Light (PPL)
2. That PPL knew or should have known that a granting by the PSC of EWG status would be a violation of state law 1997 Ch. 505 and federal law 15 U.S.C. 79 and that they would be unjustly enriched.

FINDINGS OF FACT:

- 1) The Public Utility Holding Company Act of 1935 (15 U.S.C 79 as amended 1992) (PUHCA) specifically limits the granting of EWG status (deregulation) to State commissions and not to State Legislatures. This is acknowledged by the commission on page two of its docket granting EWG status.
- 2) PUHCA specifically mandates that the State commission must find that granting of EWG (deregulation) must 1) benefit consumers 2) is in the public interest and 3) does not violate state law. PSC and PPL were well aware of these limitations and requirements. The Montana Public Service Commission unlawfully deregulated the generation facilities of Montana Power Co (for the express purpose of rushing (Page 2 of Docket) the purchase by PPL of MPC generation assets as they violated all three of the requirements in their haste to deregulate.
 - a) On page three of Docket the commission admits that “the commission has not had the “opportunity to independently access the benefits to customers and the public inherent in a completed sale”. Thereby violating provisions 1) and 2).
 - b) Commissioners Memorandum (Memorandum) dated 1/15/ 01 clearly demonstrates that the Commission refused to consider market power and other considerations on a timely basis necessary to protect customers and public interests but rather opted to wait till after the sale of the generation assets (page 2). Again, said sale would not have been consummated without EWG status (or would have been consumed with the generation assets still regulated) being granted by the Commission and such granting required, by law, proof of consumer and public interests protection and consideration.
 - c) First full paragraph on Page 6 of the Memorandum clearly states “Therefore, the commission did not initiate a proceeding to evaluate whether the sale of the generation assets was in the public interest, as it normally does in cases involving sales of public assets. While perhaps the Commission could not bar the sale it did not have to grant EWG status but rather could not without a proceeding concerning the public’s interests and consumer concerns.
 - d) 1997 Chapter 505 section 4 gave until July 1 2000 for the presentation of a report analyzing the results of pilot programs for residential and small commercial customers concerning utilization of choice programs. Not only were no such programs in existence, no such report was available on May 25, 1999 when the Commission granted EWG status. Clearly such information was necessary to provide the requisite consumer and public protection. Failure to incorporate such information was a violation of state and therefore federal law. This criterion was so important in “determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.” Clearly if the commission could not rely solely on market share estimates then they could not go forward with transition plans or the granting of EWG status until the legislatively

required actual market share information was incorporated into the proceeding. Even more undefendable if no such proceeding ever took place.

- e) The commission had the authority to extend the transition period indefinitely past July 1, 2002 if it found that “Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.” When the commission refused to have contested hearings on the matter or wait for the mandated gathering of necessary information they violated state law by not extending the transition period as required and therefore PUHCA requirements as well (Chapter 505 1997 Sec.23 (2) and Section 5 .
- f) Section 6 of Chapter 505 1997 clearly mandates that a transition plan incorporating all of SB 390 1997 be presented to the commission. Plainly no such transition plan was ever offered so the transitioning to market power rates, as made possible by the granting of EWG status, was done in violation of state law and therefore federal law as well.

THEREFORE the Plaintiffs respectfully ask this court to grant the following:

- 1) That Commission Docket D99.4.82 granting EWG status to PPL, dated May 25, 1999 is set aside and that PPL be returned to regulated rates as established by the Montana Public Service Commission.
- 2) That PPL be enjoined from selling its Montana generated power that is required to serve its native load to other sources.
- 3) That the Montana Public Service Commission starts an appropriate rate review to determine an appropriate rate base for NorthWestern Energy customers and that PPL be ordered to provide the necessary information.
- 4) That the Montana Public Service Commission immediately inform the Federal Energy and Regulatory Commission of this action and start proceedings to repeal the Federal designation of EWG.

STATE OF Montana PSC

:ss.

County of Lewis and Clark

I, Brad Molnar, being first duly sworn, upon oath, depose and say as follows: I am the Plaintiff in the foregoing complaint. I have read the foregoing Complaint and the facts and matters contained therein are true, correct and complete to the best of my knowledge and belief.

Plaintiff

SUBSCRIBED ANDSWORN to before me this _____day of _____, 2006.

(SEAL)

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____.